APPENDIX A

CORRECTED

In The

UNITED STATES COURT OF APPEALS

For The Fifth Circuit

No. 26600

JULIO DEJORIS,
Plaintiff-Appellant-Cross Appellee,

versus

UNITED STATES OF AMERICA,
Defendant-Appellee

Appeals from the United States District Court for the Southern District of Florida

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(March 21, 1969)

Before PHILLIPS,* BELL and MORGAN, Circuit Judges.

PER CURIAM: DeJoris brought this action to recover $1,050 in cabaret taxes paid by him, on the ground that they were unlawfully assessed. The United States filed a counterclaim. From a judgment on a jury verdict in favor of the United States for $18,851.40 on its counterclaim, DeJoris has appealed.

*Of the Tenth Circuit, sitting by designation.

Two issues are presented:

1. The sufficiency of the evidence to support the verdict; and

2. The correctness of an instruction given to the jury.

A review of the record leaves us without any doubt that the verdict was supported by substantial evidence and should not be disturbed.

Counsel for DeJoris did not object to the instruction given by the Court, in accordance with the provisions of Rule 51 of the Federal Rules of Civil Procedure, not at all. Neither did he request an instruction on the matter covered by the instruction which he now undertakes to assert as error. We are convinced that the instruction, if erroneous, which we do not hold, did not constitute such a plain, fundamental and prejudicial error that we should notice it, absent an objection in accordance with such Rule 51.

Affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
For The Fifth Circuit

October Term, 1963

No. 26600

D. C. Docket No. CA 66-1414

JULIO DEJORIS,

Plaintiff-Appellant-Cross Appellee,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Florida

Before PHILLIPS,* BELL and MORGAN,
Circuit Judges.

*Of the Tenth Circuit, sitting by designation.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that Plaintiff-Appellant-Cross Appellee, pay to Defendant-Appellee, the costs on appeal to be taxed by the Clerk of this Court.

March 21, 1969

Issued as Mandate: